

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.A.ABDUL GAFOOR

&

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

MONDAY, THE 4TH DECEMBER 2006 / 13TH AGRAHAYANA 1928

RCRev..No. 229 of 2004(E)

RCA.22/2003 of RENT CONTROL APPELLATE AUTHORITY, MANJERI

RCP.2/2002 of RENT CONTROL (MUNSIFF) COURT, MANJERI

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REVISION PETITIONERS/APPELLANTS/RESPONDENTS:

1. ASHARAF, S/O. THOTTIYIL KOMU,
RESIDING AT NILAMBUR AMSOM, DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

2. HUSSAIN, S/O. THOTTIYIL KOMU,
-DO- -DO-.

BY ADV. SRI.JIJO PAUL
SRI.BABU S. NAIR
SMT. SMITHA BABU

RESPONDENTS: RESPONDENTS/PETITIONERS:

1. SALIM, S/O. KOPPILAN CHEKKU,
RESIDING AT NILAMBUR AMSOM, DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

2. MUMTAZ, D/O. KOPPILAN CHEKKU,
RESIDING AT NILAMBUR AMSOM, DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

3. KHADEEJA, D/O. KOPPILAN CHEKKU,
RESIDING AT NILAMBUR AMSOM, DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

4. SAKKEENA, D/O. KOPPILAN CHEKKU,
RESIDING AT NILAMBUR AMSOM, DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

5. PATHUMMA, W/O. KOPPILAN CHEKKU,
RESIDING AT NILAMBUR AMSOM, DESOM,
NILAMBUR TALUK, MALAPPURAM DISTRICT.

BY ADV. SRI.R.RAJESH KORMATH
SMT.PREETHY KARUNAKARAN
SRI.R.RAJESH KORMATH
SMT.M.R.MINI
SMT.MEENA.A.
SMT.SANJANA R.NAIR
SRI.JAYKAR.K.S.
SRI.RAHUL VARMA
SRI.V.S.ROBIN

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD
ON 04/12/2006, THE COURT ON THE SAME DAY PASSED THE
FOLLOWING:

K.A. ABDUL GAFOOR & K.R. UDAYABHANU, JJ

R.C.R. NO. 229 OF 2004

Dated this the 4th day of December, 2006

ORDER

Udayabhanu, J

The Revision petitioners are the tenants who are conducting business in the petition schedule premises that consisted of two shop rooms. The respondents/land lords have sought for eviction on the ground of arrears of rent and also on the ground of bonafide need. The trial court allowed the same and the finding was confirmed by the appellate authority. The findings of the courts below are sought to be set aside. The only matter that arise for consideration herein is with respect to the order of eviction under section 11(3) of Kerala Buildings (Lease & Rent Control) Act, 1965.

2. It was for the son of the second petitioner i.e., PW3 that the premises are sought to be evicted, in order to start a provision store. He is aged 22 and wants to get married and to have an independent source of income. The other room is required for the 4th respondent for running a fancy store. The

contention of the Revision Petitioners is that PW3 is working as an employee in cinema theater, which was not admitted by PW3. No objective evidence as such has been produced establishing the above contention that PW3 is employed. Even if it is conceded that he is employed in a private outfit, the wages could not be that high to sustain a family.

3. The 4th petitioner was examined as PW2 who needed one of the shop rooms to start a fancy shop. It is the contention of the tenant that her her husband is employed in the Middle East as a driver. PW2 has denied the same. According to her he has not obtained a proper employment abroad and is about to return. Whether her husband is employed or not as alleged, the 4th petitioner that is PW2 is not bound to remain idle. So far as the bona fide need advanced is concerned, PW1 the first petitioner has testified that the petitioners shall provide the necessary financial input for the business of the PW3. So far as the necessary capital required for PW2 she has deposed that she is having sufficient funds. The same was not effectively challenged in the cross examination. So far as the bonafide need of PWs 2 and 3 are concerned we find that the findings of the courts below

cannot be said to be improper or illegal.

4. Regarding the contention that the petitioners are not entitled to claim eviction in view of the 1st proviso to section 11(3), RW1 the tenant has admitted that there are no vacant rooms on the front side of the building. According to him the vacant rooms are on the rear side of the building. Evidently it would not be able to run profitably a grocery shop and fancy shop of the same are not having road frontage. Hence the contention based on the 1st proviso to section 11(3) also cannot be upheld and was rightly declined by the courts below.

5. So far as the second proviso to section 11(3) is concerned, the only evidence in support of contention of the tenant that there are no other rooms available in the locality is his own interested assertion. No objective evidence in this regard has been adduced. Both the limbs of the second proviso has to be established. Hence the revision petitioner would not be entitled the protection of the second proviso as well. In the circumstances, we find no grounds at all to interfere in the findings of the courts below.

All the same considering the plea of the counsel that the

Revision Petitioner needed time to shift his business i.e., a provision store he is granted 6 months time from today onwards to vacate the premises on condition that he shall remit the entire rent in arrears if any as well as undertake that the future rent of four months from today onwards shall be paid in time and file an affidavit to the above effect before the execution court within 15 days from today. Accordingly, the Revision Petition is dismissed. The costs of the proceedings before this court as well as before the courts below shall be borne by the parties.

K.A. ABDUL GAFOOR, JUDGE

K.R. UDAYABHANU, JUDGE.

